

OFFICE OF THE ATTORNEY GENERAL



CHARLES A. GRADDICK
ATTORNEY GENERAL
STATE OF ALABAMA

ADMINISTRATIVE BUILDING
64 NORTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 834-5150

JAMES R. SOLOMON, JR.
DEPUTY ATTORNEY GENERAL

WILLIAM M. BEKURS, JR.
EXECUTIVE ASSISTANT
TO THE ATTORNEY GENERAL

WALTER S. TURNER
CHIEF ASSISTANT ATTORNEY GENERAL

JANIE NOBLES
EXECUTIVE ASSISTANT

OCT 7 1985

Fred V. Smith
Commissioner
Alabama Department of Corrections
Montgomery, Alabama 36130

Department of Corrections -
Witnesses - Uniform Act

The "Uniform Act to Secure the
Attendance of Witnesses from
Without a State in Criminal
Proceedings" can apply to
state inmates.

Dear Commissioner Smith:

We have received your request for an Attorney General's opinion concerning the applicability of the "Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings" to state inmates. This Act is found in Code of Alabama 1975, § 12-21-282 (Cum. Supp. 1984), and provides that where a judge in a signatory state finds that a person in this state (Alabama) is a material witness in a criminal proceeding or grand jury investigation in the requesting state and that his presence is required for a specified number of days, the judge shall make an order directing the witness to appear at a time and place for the hearing. (Emphasis added)

The word "witness" is defined in Code of Alabama 1975, § 12-21-281 (Cum. Supp. 1984), as "a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding." No restrictions are placed upon the class

or status of persons included in the definition of "witness". The absence of any restrictions upon the term "witness" would seem to imply that inmates would be included within its meaning.

The Alabama Legislature has also codified the common law writ of habeas corpus ad testificandum which provides for the appearance of a state inmate in state criminal prosecutions when that inmate is a necessary witness. Code of Alabama 1975, § 15-21-225. However, nothing in this statute provides for the transportation of an inmate across state lines.

It is also unclear as to exactly what function the writ of habeas corpus ad testificandum has today in view of the existence of this Uniform Act. Of course, the Uniform Act could not be used unless the states involved are both signatories to the compact.

In the case of Barber v. Page, 390 U.S. 719 (1968), the United States Supreme Court, in a footnote, stated as follows:

4. For witnesses not in prison, the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings provides a means by which prosecuting authorities from one state can obtain an order from a court in the state where the witness is found directing the witness to appear in court in the first state to testify. The State seeking his appearance must pay the witness a specified sum as a travel allowance and compensation for his time. As of 1967, the Uniform Act was in force in 45 states, the District of Columbia, the Canal Zone, Puerto Rico, and the Virgin Islands. See 9 Uniform Laws Ann 50 (1967) Supp.) For witnesses in prison, quite probably many state courts would utilize the common-law writ of habeas corpus ad testificandum at the request of prosecutorial authorities of a sister state upon a showing that

adequate safeguards to keep the prisoner
in custody would be maintained.
(Emphasis added.)

From this statement by the Court, it would seem that while the habeas writ could be used, it would be purely discretionary and a matter of comity in a given case. This statement does not however seem to foreclose utilization of the Uniform Act.

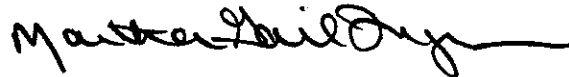
It would appear that from a practical standpoint, it would be best for the State to utilize the Uniform Act where applicable rather than the Writ, as it offers more safeguards for the continued custody of the inmate. If a writ were used, a prosecutor in the requesting state would ask a prosecutor in the sending state to get his court to issue a writ and send the inmate to the requesting state. We, as the sending state, would have the responsibility of complying with the provisions of § 12-21-225 and possibly would have to bear the expense.
(Emphasis added)

However, if the Act were used, two judicial determinations would be made as to whether the inmate should indeed be transferred. First, the requesting state court must be shown that the inmate is a material and necessary witness and then the Court of the inmate's residence in the sending state must hold a hearing on the order. § 12-21-282(a). It is at this point, at the second hearing in the sending state, that the Board of Corrections can voice any objections to the transfer, i.e., death-row inmate, likelihood of escape, etc. At that point, it should be understood that pursuant to § 12-21-282(a)-283(c), the requesting state is to bear all expenses for the transfer and provide continued custody for the inmate. If such is not assured, then the sending court should not honor the request.

In conclusion, it is the opinion of this office that this Uniform Act can apply to state inmates. It is our further opinion that the Uniform Act, when applicable, would provide more safeguards than that of the Writ of Habeas Corpus Ad Testificandum. The utilization of the Uniform Act would also encourage comity between the states who have enacted this Act. But, regardless of whether the Uniform Act or the writ of habeas corpus ad testificandum is preferred, no inmate should be allowed to leave the State of Alabama unless one or the other is utilized. In other words, an inmate should only be sent or released to the custody of another state pursuant to a court order issued pursuant to § 12-21-282(c) or § 12-21-225.

Sincerely,

CHARLES A. GRADDICK
ATTORNEY GENERAL
BY-

A handwritten signature in black ink, appearing to read "Martha Gail Ingram", with a long horizontal flourish extending to the right.

MARTHA GAIL INGRAM
ASSISTANT ATTORNEY GENERAL